

# ALLAN MACURDY: “FROM YOUR LIPS TO GOD’S EAR”

Aviam Soifer\*

How could Allan do it?

Even those of us blessed to have known Allan over many years cannot fully grasp the answer. We could not and still do not believe his tenacity and courage, abiding curiosity, sparkling ability to make connections, and profound and provocative insights. He gracefully and lovingly sprinkled these qualities throughout his significant articles, engaging and often path-breaking teaching, administrative acuity, and gift for both deep friendship and casual conversation—to say nothing of the key role he played in the belated yet marked success of the Red Sox. And, oh—was Allan ever funny!

It undoubtedly seems strange, but I believe that the Yiddish expression, “From Your Lips to God’s Ear,” might aid in understanding key aspects of the Allan Macurdy Phenomenon. To me, the old Yiddish expression seems to do nothing less than to pose a challenge to common assumptions about jurisdictional boundaries, life on earth, and a higher dimension. It also underscores the potential power of the spoken word. Finally, the thrust of its words is in a move toward a better world. This audacious hope is made at least thinkable through a subversive collaboration between human verbalization and divine intervention. In other words, a just God would heed what you just said.

Allan was preoccupied by conversing on many levels about what justice ought to mean in the here and now, and in the near future. The wonders of technology allow even someone like me—somewhat technophobic and certainly a techno-fogey—to retrieve snatches of e-mail conversations with Allan over many years. I therefore very quickly found an essay by the novelist Richard Powers, “How to Speak a Book,” that Allan forwarded to a few friends in early January 2007.<sup>1</sup> In this essay, Powers convincingly argues that the physical act of writing “damages memory, obscures authority, and even alters meaning.”<sup>2</sup> But even Powers’s fine

---

\* Dean and Professor, William S. Richardson School of Law, University of Hawai’i.

<sup>1</sup> Richard Powers, Book Review, *How to Speak a Book*, N.Y. TIMES, Jan. 7, 2007, § 7 at 31. Apparently Allan subscribed to the advanced copy Book Review service or had some other means to see an advance copy, as his e-mail was before 8 am on the morning of January 6, 2007.

<sup>2</sup> *Id.* Powers makes the good point that these thoughts really simply translate the words of Socrates, at least as written down in the “Phaedrus,” which he points out is Plato’s “suspect transcript.” Powers also neatly celebrates his own ability to write by

essay does not come close to the wonder contained within the succinct introductory message from Allan as he forwarded the essay.

That January, Allan spoke/wrote the following: "This essay conveys one blessing of being unable to move—many have proven that bodily shackles cannot cage the mind, but few know the joy and magic of speaking your words in the glory of the language!" Leave it to Allan's unquenchable spirit to deem the physical boundaries he faced to be part of a blessing, and to be productive of joy, magic, and even glory.

Even a small sample of Allan's e-mails bounces with his verve for ideas and for exchanges about them, discussing the pluses and minuses of sheer intellectual audacity, for example, or how much to bring out his own voice. He is excited when he discerns that "sovereignty is a normative animal"; after two winter months with "a tenacious pneumonia," he is happily at work on full faith and credit and has begun to think about "reasons to respect other states laws as aggregate voices of self-determination—sort of a Democratic theory of comity"; he keenly perceives that "the jurisdictional questions are what attract me to Admiralty and federal Indian law," and now he is considering the wisdom of creating and offering a new course "in federal practice/advanced procedure."<sup>3</sup> There were no jurisdictional barriers to Allan's remarkably supple mind.

In fact, Allan's ongoing concern with and challenges to boundaries and jurisdictional lines might be traceable in large measure to his acute sense of physical constraints. What stands out throughout his scholarship, however, is how brilliantly he challenged accepted assumptions about limits of all sorts. Repeatedly, Allan demonstrated that the constraints we face and consider insurmountable are usually our own creations. He did this, for example, in some of his most recent work when he worried that Disability Studies was in danger of becoming "substantially disconnected" from a generation of civil rights jurisprudence that could be instructive about "the tenacity and complexity of prejudice."<sup>4</sup>

Writing, teaching, or conversing, Allan used his intellectual breadth and his finely attuned legal mind to emphasize connections and broad

---

vocalizing, thanks to a three-pound tablet PC. It is intriguing that Powers invokes the same Yiddish expression discussed above, though I believe his version contains a slight mistranslation. Powers has it as: "From your lips to God's ears." *Id.* Powers uses this "old Yiddish wish" to underscore an important further point. Powers notes, "Writing is the act of accepting the huge shortfall between the story in the mind and what hits the page." He goes on to contrast the work of any writer with the Yiddish expression, and he adds: "The writer, by contrast, tries to read God's lips and pass along the words, via some crazed game of Telephone, to a further listener." *Id.* Powers's novel, *The Echo Maker*, won the 2006 National Book Award.

<sup>3</sup> E-mails from Allan Macurdy to author (February 11, 2003; April 27, 2005; November 29, 2006) (on file with the editors).

<sup>4</sup> Allan Macurdy, *Review Essay: Thinking About Rights: A Review of "Disability Rights,"* 26(4) *DISABILITY STUDIES Q.* (2006), [http://www.dsqsds-archives.org/\\_articles\\_html/2006/fall/macurdy.asp](http://www.dsqsds-archives.org/_articles_html/2006/fall/macurdy.asp), ¶ 1.

challenges. And he never wavered from his belief that there are universal rights, often obscured by legal analysis as well as by the rampant individualism he decried.<sup>5</sup> Indeed, for Allan, jurisdictional questions should force us all to drill down to basic issues. As he put it, “Disability rights existed prior to their infringement by majorities and the state, and the rights movement arose to combat that infringement.”<sup>6</sup>

Toward the end of his life, Allan saw commonality in the legal arguments and the organizing that helped produce Lord Mansfield’s celebrated decision to free Somerset—a slave brought from Virginia to Great Britain, and about to be shipped to Jamaica to be sold—by reasoning that “the Air of England was too pure for slavery.”<sup>7</sup> As a person who defiantly triumphed over isolation all his life and who depended on a respirator for much of it, Allan had begun to develop “a fundamental constitutional value of interaction upon which all other rights depend.”<sup>8</sup> To him, “independence from others is not only myth but is pernicious.”<sup>9</sup> By contrast, Allan embraced the *Letter from the Birmingham Jail* in which Dr. Martin Luther King, Jr. identified “an inescapable network of mutuality, tied in a single garment of destiny”—and Allan added that “all of us take in from the same air” and thus we must rely upon each other “to protect the air” and we must depend on “the web of relationship” that keeps us from “social asphyxiation and the death of self.”<sup>10</sup>

But no one should be fooled into thinking that Allan was a softie. His careful, often caustic, and always hard-headed scholarship and teaching entirely refute any such notion.<sup>11</sup> Nonetheless, many people will most fondly remember Allan Macurdu for his extraordinary skill in transcending boundaries and his great creativity in making original and compelling connections. One hesitates even to say “unique” about an individual who so often and so cogently critiqued individualism, but con-

---

<sup>5</sup> Thus, for instance, “Rights are too important to be left to lawyers, but the struggle for rights and their protections is a universal one.” *Id.* ¶ 10.

<sup>6</sup> *Id.* ¶ 4.

<sup>7</sup> *Somerset v. Stewart* (1772), 98 Eng. Rep. 499 (K.B.).

<sup>8</sup> Allan Macurdu, *Rights Respiration: Disability, Isolation, and a Constitutional Right of Interaction*, 13 TEX. WESLEYAN L. REV. 737, 746 (2007).

<sup>9</sup> *Id.* at 740.

<sup>10</sup> *Id.* at 748.

<sup>11</sup> See, e.g., Allan Macurdu, *The Americans with Disabilities Act: Time for Celebration, or Time for Caution?*, 1 B.U. PUB. INT. L.J. 21 (1991) (showing his willingness to rain carefully yet heavily on the parade for the new ADA); Allan Macurdu, *Disability Ideology and the Law School Curriculum*, 4 B.U.PUB. INT. L.J. 443 (1995) (exemplifying his sharp critique of mainstream American legal education); Allan Macurdu, *Review Essay: Thinking about Rights*, *supra* note 4 at ¶ 9 (arguing that many contributors to *Disability Rights* missed the significance of the role that private law plays in oppression as well as his point that their narrow compass risked increased marginality for Disability Studies).

nections constituted Allan's unique strength as a student, teacher, administrator, correspondent, and friend.

He would not allow any of us to "deny our inter-relatedness, to succumb to fear, and to cover it with oily sentiment."<sup>12</sup> Rather, he lived and loved, and taught and learned in good company. Therefore, it is sadly and deeply paradoxical that none of us has ever known nor ever will know again anyone like Allan, so uniquely able to demonstrate "the lush breadth and power of the human spirit."<sup>13</sup> Allan recognized that "learning actually happens through immersion in constant and complex interaction amongst student, teacher, and classmates."<sup>14</sup> And could Allan ever interact!

That said, what stands out most about Allan was his wise heart and caring spirit. This largely explains his extraordinary success in connecting with others. He beautifully described how his parents "taught me that my worth was measured by my care for others" and noted how his siblings "never accepted that I had limits at all."<sup>15</sup> The many people who helped him through the years thus became much more than hired assistants, and his mother, Sarah Macurdy, truly embodied selfless dedication through her many years as his indefatigable champion. Most of all for Allan, his wife Marie Trottier Macurdy was—as he said in his last article—"my life and my inspiration."<sup>16</sup>

Allan's words live on throughout many jurisdictions, and one can say with considerable confidence that what he said and wrote and did will be widely remembered as a blessing. As Allan said when he memorialized Professor Mary Jo Frug years ago, "though we are inconsolable, [s]he would have us hope."

From Allan's lips to . . . ?

---

<sup>12</sup> Macurdy, *Disability Ideology*, *supra* note 11, at 457.

<sup>13</sup> *Id.*

<sup>14</sup> Macurdy, *Rights Respiration*, *supra* note 8, at 747.

<sup>15</sup> Macurdy, *Americans with Disabilities Act*, *supra* note 11, at 21.

<sup>16</sup> Macurdy, *Rights Respiration*, *supra* note 8, at 737 n.1.